

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WENDY N. HURT,	:	Case No. 1:07-cv-179
	:	
Plaintiff,	:	Beckwith, C.J.
	:	Black, M.J.
vs.	:	
	:	
CHASE MANHATTAN BANK, <i>et al.</i> ,	:	
	:	
Defendants.	:	ORDER

On April 11, 2007, Plaintiff Wendy N. Hurt filed an application for entry of default¹ against Defendant Equifax Credit Information Services (“Equifax”) (Doc. 12). In support of her application. Plaintiff alleged that Equifax had failed to file an Answer or otherwise plead following service of the summons and complaint.

On April 12, 2007, Equifax filed its Answer. (Doc. 15.) In a supplemental pleading, Plaintiff stated that she had no objection to the filing of Equifax’s Answer. (Doc. 19).

Rule 55 of the Federal Rules of Civil Procedure authorizes an entry of default, as follows: “[when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.” Fed. R. Civ. P.

¹ The application for entry of default was erroneously docketed as a “Motion for Default Judgment.” Because there had been no prior entry of default under Fed. R. Civ. P. 55(a), a motion for default judgment under Fed. R. Civ. P. 55(b) was premature. See Fed. R. Civ. P. 55(a), (b); *United Coin Meter Co. v. Seaboard Coastline R.R.*, 705 F.2d 839, 844 (6th Cir. 1983); *Meehan v. Snow*, 652 F.2d 274, 276 (2d Cir. 1981).

55(a).

In light of the filing of Equifax's Answer, it cannot be said that this defendant "has failed to plead or otherwise defend."

Accordingly, **IT IS HEREIN ORDERED** that Plaintiff's application for entry of default against Defendant Equifax Credit Information Services (Doc. 12) is **DENIED**.

Date 5/10/07

s/Timothy S. Black

Timothy S. Black

United States Magistrate Judge